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VIA ECF

Judge Denis R. Hurley
U.S. District Court
Eastern District of New York
Long Island Courthouse
100 Federal Plaza
Central Islip, NY 11722

Re: Ren et al v. Foot Relaxing Station, Inc. et al
Case No. 2:14-cv-07154

OPPOSITION TO DEFENDANTS' MOTION FOR PRE-MOTION CONFERENCE

Dear Hon. Denis R. Hurley:

This firm is counsel for the Plaintiffs in the abovementioned matter. We write pursuant to Your Honor's individual rules in opposition to Defendants motion requesting a pre-motion conference. Specifically, we oppose Defendants' anticipated motion for Summary Judgment.

In order for Defendants to prevail on their anticipated motion for summary judgment, they must demonstrate "there is no genuine dispute as to any material fact," and, thus that they are "entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). Thus, the initial burden is on the Defendants to "show the absence of a "genuine" dispute over facts relevant to the Plaintiff, or any element thereof, which would allow a "reasonable jury" to "return a verdict for" the Plaintiff." *Li v. Zhao*, 35 F.Supp. 3d 300, 304 (E.D.N.Y. 2014), *quoting*, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505 (1986). While the Plaintiffs bear the burden of proof at trial, to prevail on this motion the Defendant must (1) point to evidence that negates the plaintiffs' claim, or (2) identify those portions of the plaintiffs' evidence that demonstrate the absence of a genuine issue of material fact. *Id; Salahuddin v. Goord*, 467 F.3d 263, 272-73 (2d Cir. 2006).

The Defendants are seeking Summary Judgment on the grounds that Plaintiffs lack enterprise and individual coverage under the FLSA. Specifically, Defendants assert that the Defendant's spa does not meet the $500,000 threshold in terms of gross sales per annum, and that

Plaintiffs were not "engaged in commerce" while employed by Defendants. Defendants have produced financial records which, at the very least, raise a question about whether their spa grossed less than the required $500,000 per year during the relevant period. Defendants' spa is largely a cash business, and even so they have produced tax records which show as much as $451,000 per year. There is a possibility that a large percentage of its actual revenue went unreported. It is therefore likely that the spa made the required $500,000 per year, when taking into account the probability of unreported cash in addition to the amount of profits demonstrated by Defendants' records. It is highly unlikely that Defendants avoided purchasing or having Plaintiffs handle supplies that were moved in interstate commerce during the course of their regular duties. Moreover, a dispute over the existence of a prerequisite for applying a federal statute, in this case enterprise coverage under the FLSA, goes to the merits of the case, not the court's subject matter jurisdiction. Saca v. Dav-El Reservations Sys. Inc., 600 F.Supp.2d 483, 486 (E.D.N.Y. 2009).

Accordingly, Plaintiffs will respectfully oppose Defendants' Motion for Summary Judgment.

Very Truly Yours,

/s/ Marisol Santos
Marisol Santos, Esq.
Attorney for Plaintiffs